

**IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

CHARLES BOWLDS,

Plaintiff,

v.

TURN KEY HEALTH, et al.,

Defendants.

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Case No. CIV-19-726-SLP

**ORDER**

Plaintiff, a pro se litigant, filed a complaint alleging violations of his constitutional rights pursuant to 42 U.S.C. § 1983. Pursuant to the Court’s Order of Referral [Doc. No. 4], on September 22, 2020, Magistrate Judge Shon T. Erwin issued a Report and Recommendation [Doc. No. 74] recommending Plaintiff’s Renewed Motion for Preliminary Injunction [Doc. No. 55] be denied as moot. The Magistrate Judge found Plaintiff had received the relief requested: (1) copies of requested medical records; and (2) treatment from a dentist.


Plaintiff has filed a Response [Doc. No. 76]. Plaintiff “concedes” his Motion is now moot. However, Plaintiff asks the Court “to continue to consider the factual allegations set out in the Plaintiff’s Motion and in the least view it as a Verified Complaint treated as an affidavit.” Pl.’s Resp. at 1-2. To this end, Plaintiff’s request is denied. Incorporation by reference is not allowed under these circumstances. *See* Fed. R. Civ. P. 10(c). While Rule 10(c) allows for a statement *in a pleading* to be adopted by reference elsewhere in the same pleading, or in any other pleading or motion, a pleading

cannot adopt factual assertions from other filings. *See id.* If Plaintiff seeks leave to further amend his complaint, he must comply with Fed. R. Civ. P. 15(a)(2).

Plaintiff further asks that the Motion be treated as an affidavit, and cites Rule 56(c)(4) of the Federal Rules of Civil Procedure. That Rule pertains to motions for summary judgment. Plaintiff does not state for what purpose he seeks to use the Motion “as an affidavit” and the Report and Recommendation did not address any motion for summary judgment. Therefore the Court declines his request at this time.

IT IS THEREFORE ORDERED that the Report and Recommendation [Doc. No. 74] is ADOPTED and Plaintiff’s Renewed Motion for Preliminary Injunction [Doc. No. 55] is DENIED as MOOT.

IT IS SO ORDERED this 5<sup>th</sup> day of October, 2020.

  
SCOTT L. PALK  
UNITED STATES DISTRICT JUDGE